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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): **4015-5196/P10059-US3**	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number: **10/780,783** / Filed: **February 18, 2004**
Date: **January 7, 2008**	First Named Inventor: **Alex Krister Raith**
Signature:	
Typed or printed name: **JENNIFER K. STEWART**	Art Unit: **2616** / Examiner: **NGUYEN H. NGO**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record
Registration Number: 53,639

☐ attorney or agent acting under 37 CFR 1.34.
Registration Number if acting under 37 CFR 1.34_____

Signature

Jennifer K. Stewart
Typed or Printed Name

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Telephone Number

January 7, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ form(s) is/are submitted.

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. [1] Applicant's unique citation designation number (optional). [2] Applicant is to place a check mark here if English language Translation is attached.This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Raith**	
Serial No.: **10/780,783**	PATENT PENDING
Filed: **18 February 2004**	Examiner: Nguyen H. Ngo
For: **Thermal Transmission Control of Wireless Data Modem**	Group Art Unit: 2616
Docket No: **4015-5196**	Confirmation No.: 2741

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Alexandria, VA 22313-1450

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

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7 January 2008 — Debra A. Holmes
Date — Debra A. Holmes

This correspondence is being:

☒ electronically submitted via EFS-Web

PRE-APPEAL BRIEF REQUEST FOR REVIEW ARGUMENTS

Applicant submits the following remarks in support of the Pre-Appeal Brief being filed concurrently with a Notice of Appeal. If any fees not covered by the enclosed check are required, please charge them to Deposit Account No. 18-1167.

Claims 42 – 55 are currently pending, of which claims 42 and 53 are independent. Independent claims 42 and 53 stand finally rejected under §102(e) as anticipated by Funk (US6169884).

The claimed invention relates to controlling the temperature of a wireless device. Independent claim 42 claims a transceiver comprising a temperature measuring device, a transceiver, and a processor. The temperature measuring device measures a temperature of the transceiver, and the processor selectively modifies a transmit power level and a

transmission data rate associated with transmitting data from the transceiver based on a comparison between the measured temperature and a threshold temperature. Independent claim 53 claims a mobile station corresponding to the transceiver of claim 42.

Contrary to the examiner's assertions, nothing in Funk teaches or suggests modifying a transmission data rate based on a measured temperature. Instead, Funk teaches changing the duty cycle of a non-data signal, such as an SAT (Supervisory Audio Tone) signal, based on a measured temperature. As well understood by those skilled in the art, "data rate" represents the number of bits conveyed or processed in a unit of time (http://en.wikipedia.org/wiki/Bit_rate). Contrastingly, "duty cycle" represents the proportion of time during which a component, device or system is operated (http://en.wikipedia.org/wiki/Duty_cycle). Because duty cycle is not the same as data rate, the duty cycle modification taught by Funk cannot be construed as equivalent to the claimed data rate modification of claims 42 and 53.

Further, nothing in Funk teaches or suggests modifying the transmit power level AND the transmission data rate based on a measured temperature. Instead, Funk explicitly teaches modifying a transmission power OR modifying a duty cycle of a non-data signal. See col. 4, ll. 32 – 33. The examiner contends that col. 4, ll. 29 – 43 of Funk teaches simultaneously modifying the transmit power level by inserting pauses into a continuously transmitted signal (e.g., by modifying the duty cycle). However, col. 4, ll. 29 – 34 explicitly says (emphasis added):

> Transmission power may be reduced in ways other than reducing the power level. Referring to FIG. 4, for example, transmission power may be reduced by, instead of reducing the power level, inserting brief pauses at intervals during the transmission, the transmit amplifier being turned off during such pauses.

The section relied upon by the examiner therefore explicitly teaches how to modify a transmission power without modifying the transmit power **level**. Thus, nothing in Funk teaches or suggests modifying the transmit power level AND the transmission data rate based on a measured temperature.

For at least the above-stated reasons, Funk neither teaches nor suggests the specific transmit power level and transmission data rate modification limitations of independent claims 42 and 53. Thus, independent claims 42 and 53, and all claims depending therefrom, are new and non-obvious over the cited art. As such, the applicant requests that the Pre-Appeal Brief Panel reconsider and reverse the examiner's rejections of claims 42 – 55.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

Dated: 7 January 2008

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